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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re ROBERT L., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT L.,

Defendant and Appellant.

F068850

(Super. Ct. No. JW131064-00)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Peter Warmerdam, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Robert McLaughlin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, William D. Kim and Leanne Le Mon, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Gomes, J. and Kane, J.

The juvenile court found that appellant Robert L. was a person described in Welfare and Institutions Code section 602 after it sustained allegations charging him with the following crimes on a child under the age of 14: a lewd or lascivious act (Pen. Code, § 288, subd. (a))¹; a lewd or lascivious act by the use of force (§ 288, subd. (b)(1)); and forcible sodomy (§ 286, subd. (c)(2)(B)). The juvenile court committed appellant to the Department of Juvenile Justice (DJJ), set his maximum confinement at 13 years, and ordered that he register pursuant to section 290.

Appellant contends the juvenile court abused its discretion in committing him to the DJJ and in committing him for the maximum possible period of confinement. We affirm.

FACTS

In late January 2013, Mr. and Mrs. R. invited then 14-year-old appellant and his mother to stay at their home because they needed a place to stay. The R. household consisted of the parents, three teenage boys and two daughters. The youngest daughter (victim) was 10 years old at that time.

There were two bedrooms in the R. house. Appellant and his mother slept in one bedroom, Mrs. R. and her daughters in the other bedroom, and the boys in the living room. The children occasionally watched television in the living room while lying on an air mattress on the floor. Sometimes the daughters fell asleep on the air mattress.

One evening in late February 2013, Mr. and Mrs. R., their children, and appellant went to the movies. After they returned, all of the children, including appellant, watched television in the living room. Mr. and Mrs. R. went to sleep around 9:00 p.m. At that time, all of the children were watching television in the living room and the two daughters were the only children on the air mattress.

¹ All further statutory references are to the Penal code unless otherwise indicated.

That night, victim fell asleep on the air mattress with her sister and brother. Sometime after the victim fell asleep, appellant got on the air mattress next to the victim. During the night, appellant put his hand over the victim's mouth, pulled his and her pants down and inserted his penis into her anus. The victim said she was unable to move because appellant wrapped his feet around her feet. Afterward, her bottom was stinging and burning and she noticed a little blood on her bottom when she went to the bathroom.

The following morning, the victim woke her mother early in the morning. The victim was crying and said her "bottom hurt." She told her mother what appellant had done. Mrs. R. went into the living room and saw appellant asleep on the mattress. That evening, Mr. R. confronted appellant's mother and told her she and appellant had to leave. Later that evening, Mr. and Mrs. R. called the police.

Bakersfield Police Officer Travis McNish was dispatched to the R. residence. He spoke to appellant who said nothing happened between him and the victim but if something did happen then he was sleepwalking.

Sexual assault nurse examiner Susan Nemarderosian physically examined the victim and found three small lacerations and bruising around her anal opening. Nemarderosian opined the injuries were consistent with forcible sodomy.

In July 2013, the Kern County District Attorney filed a juvenile wardship petition against then 15-year-old appellant pursuant to section 288, subdivision (b)(1) (count 1); section 288, subdivision (a) (count 2); section 289, subdivision (a)(1)(B) (penetration with a foreign object, a finger; count 3); and section 286, subdivision (c)(2)(B) (count 4).

The juvenile court detained appellant and continued him in the custody of his mother. Appellant had no prior juvenile offenses.

In January 2014, the juvenile court conducted the jurisdictional hearing and heard the testimony of the prosecution and defense witnesses. On the motion of minor's counsel, the juvenile court dismissed count 3 and found the remaining counts to be true. The juvenile court set the dispositional hearing for January 31, 2014.

Prior to the hearing, appellant met with a probation officer. He admitted being in the bed with the victim but denied committing any sexual acts with her. He believed he was the victim because he was being falsely accused. The probation officer discussed possible dispositional outcomes with appellant. Appellant did not believe he should be in custody and did not believe sexual offender counseling would benefit him. He believed the Kern Crossroads Facility (Kern Crossroads) with release to his mother and outpatient sexual offender counseling was the best option for him.

In her report, the probation officer recommended the juvenile court commit appellant to the DJJ, which she believed best met his need for sexual offender counseling and heightened security. She also recommended the juvenile court commit appellant to the maximum period of confinement of 13 years and require him to register pursuant to section 290.

Minor's counsel filed an opposition to appellant's placement in the DJJ, arguing that committing him to Kern Crossroads followed by treatment in a sex offender group home would better serve the interests of justice. Counsel attached a forensic evaluation of appellant prepared by Gary A. Longwith, Psy.D. to the opposition. Dr. Longwith opined that appellant was at a low to moderate risk of reoffending and exhibiting sexual violence. Longwith recommended appellant participate in psychotherapy to address his adjustment issues and conflicted sexual maturation issues.

At the January 31, 2014 contested dispositional hearing, the juvenile court adjudged appellant a ward of the court, committed him to the DJJ, stayed punishment under counts 1 and 2, set the maximum period of confinement at 13 years based on count 4, and ordered him to register as a sex offender pursuant to section 290 upon parole or discharge from the DJJ.

This appeal ensued.

DISCUSSION

Commitment to the DJJ

Appellant contends the juvenile court abused its discretion when it committed him to the DJJ.² We find no abuse of discretion.

The probation officer's recommendation to commit appellant to the DJJ was based on the seriousness of his offenses, his age, the victim's age, his refusal to take responsibility for his actions and his lack of remorse. She considered but rejected Kern Crossroads as a possible commitment. Though Kern Crossroads offered cognitive behavioral therapy and individual counseling, it did not offer the sexual offender treatment she believed appellant needed. In addition, Kern Crossroads provided only nine months of custody time, which the probation officer did not believe was sufficient to hold appellant accountable for his egregious act.

At the dispositional hearing, appellant's counsel argued that appellant's refusal to admit his crime rendered "sex offender treatment moot." Therefore, he could just as easily benefit from a commitment to Kern Crossroads as he could from a commitment to the DJJ. If committed to Kern Crossroads, his counsel further argued, appellant may become more receptive to sexual offender treatment after participating in the behavioral therapy and individual counseling offered there. Counsel further pointed out that appellant was assessed at a low to moderate risk to reoffend, controlled himself while out of custody and under probation scrutiny, and had excellent school attendance and behavior.

The juvenile court committed appellant to the DJJ, stating:

"[T]his particular type of crime, ... by its very nature is egregious and serious. [T]he [commitment] considerations are ... [the DJJ] and ...

² Respondent argues appellant forfeited his right to challenge the juvenile court's order committing him to the DJJ by failing to object at the dispositional hearing. We find no forfeiture here. Appellant's trial counsel filed a motion opposing the commitment and argued at the dispositional hearing for a commitment to Kern Crossroads.

out-of-home placement with treatment in a sexual offender group home. [¶] ... [¶] [The court considered] a commitment to [Kern Crossroads] followed by placement in [a] sexual offender group home The problem with that option is ... [appellant's] ... continued denial makes him unsuitable for treatment in a group home [¶] ... [¶] [T]he [c]ourt ... is left with [the DJJ,] the only option that would appear to be suitable for treatment, as well as for the protection of others.”

The juvenile court’s decision to commit a juvenile offender to the DJJ may be reversed on appeal only by a showing that the court abused its discretion. (*In re Carl N.* (2008) 160 Cal.App.4th 423, 431-432.) “[D]iscretion is abused whenever the court exceeds the bounds of reason, all of the circumstances being considered.” (*Id.* at p. 432.)

We review the commitment order in light of the purpose of the juvenile delinquency laws, which “is two-fold: (1) to serve the ‘best interests’ of the delinquent ward by providing care, treatment, and guidance to rehabilitate the ward and ‘enable him or her to be a law-abiding and productive member of his or her family and the community,’ and (2) to ‘provide for the protection and safety of the public’” (*In re Charles G.* (2004) 115 Cal.App.4th 608, 614-615.)

“[T]he statutory scheme contemplates a progressively more restrictive and punitive series of dispositions starting with home placement under supervision, and progressing to foster home placement, placement in a local treatment facility, and finally placement at the DJJ. [Citation.] Although the DJJ is normally a placement of last resort, there is no absolute rule that a DJJ commitment cannot be ordered unless less restrictive placements have been attempted. [Citations.] A DJJ commitment is not an abuse of discretion where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate.” (*In re M.S.* (2009) 174 Cal.App.4th 1241, 1250.)

“An appellate court will not lightly substitute its decision for that rendered by the juvenile court. We must indulge all reasonable inferences to support the decision of the juvenile court and will not disturb its findings when there is substantial evidence to support them.” (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.)

We conclude substantial evidence supports the juvenile court's decision to commit appellant to the DJJ. The chief concerns of the juvenile court and probation officer were the seriousness of appellant's crime and his need for sexual offender treatment. Of the commitment options available, the DJJ was the most beneficial for appellant. It had two residential sex offender treatment programs specifically designed to treat youth who sexually abused. In addition, appellant would receive group and individual therapy in a secure environment and would have to build a positive rapport with his therapist in order to move forward in the treatment process. He would also participate in continuing education, vocational training, and victim awareness. Thus, there was ample evidence that appellant would benefit from a DJJ commitment.

Appellant contends he would *not* benefit from a DJJ commitment because he refused to engage in sex offender treatment. In our view, appellant's unwillingness to participate in sexual offender treatment actually heightens the probable benefit he will derive from his commitment to the DJJ. It stands to reason that if appellant is to be rehabilitated, he must acknowledge his offense and submit to treatment. That is most likely to occur at the DJJ because the treatment is geared toward sexual offenders, progress requires engaging in therapy, and treatment occurs in a therapeutic environment.

We also conclude substantial evidence supports the juvenile court's finding that less restrictive alternatives to a DJJ commitment would be ineffective or inappropriate. Regarding this issue, appellant contends less restrictive alternatives such as Kern Crossroads and a group home were effective alternatives because he had no history of sexual misconduct and behaved in an exemplary manner while out of custody. We disagree that these alternatives were effective. The fact that appellant required sexual offender treatment and that neither of these alternatives offered it renders them ineffective in his case.

Finally, we reject appellant's contention that the juvenile court abused its discretion in committing him to the DJJ only because there were no effective alternatives.

For this proposition, appellant cites *In re Aline D.* (1975) 14 Cal.3d 557 (*Aline D.*) in which the Supreme Court reversed a commitment to the California Youth Authority (CYA), the predecessor to DJJ. (*Id.* at p. 559.) In *Aline D.*, it was indisputable that the minor was mentally impaired and unsuitable for commitment to the CYA. (*Id.* at p. 561.) Nevertheless, the juvenile court sent the minor there because there was not a suitable alternative. (*Id.* at p. 562.) The *Aline D.* court stated:

“[U]nder the present statutory scheme, supported by sound policy considerations, a commitment to CYA must be supported by a determination, based upon substantial evidence in the record, of probable benefit to the minor. The unavailability of suitable alternatives, standing alone, does not justify the commitment of a nondelinquent or marginally delinquent child to an institution primarily designed for the incarceration and discipline of serious offenders.” (*Id.* at p. 567.)

Appellant contends his offense, though admittedly “severe in nature,” was an “aberration.” Therefore, he asserts, he is like the “marginally delinquent child” referred to in *Aline D.*, who does not belong among the serious offenders found in the DJJ. We disagree. Whether appellant’s offense was an aberration remains to be seen. Further, sodomizing a 10-year-old child is not marginally delinquent behavior. It is a serious criminal offense. Finally, as we discussed above, the juvenile court did not commit appellant to the DJJ just because there were no effective alternatives. The juvenile court committed him there because it alone offered the sexual offender treatment that he needed.

Maximum possible period of commitment

Appellant contends the juvenile court abused its discretion when it committed him to the DJJ for the maximum term of 13 years of confinement. He contends it was an abuse of discretion because he has no history of sexual misconduct and presents only a low to moderate risk of reoffending. Again, we find no abuse of discretion.

Welfare and Institutions Code section 731 “permits the juvenile court in its discretion to impose either the equivalent of the ‘maximum period of imprisonment that

could be imposed upon an adult convicted of the offense or offenses' committed by the juvenile (§ 731, subd. (c)) or some lesser period based on the 'facts and circumstances of the matter or matters that brought or continued' the juvenile under the court's jurisdiction." (*In re Julian R.* (2009) 47 Cal.4th 487, 498 (*Julian R.*)).

When a court imposes a maximum period of confinement equal to the maximum adult term, unless the record indicates otherwise, we must presume that: "(1) the court exercised its discretion in setting a maximum period of physical confinement that was measured against both the ceiling set by the maximum adult prison term and a possibly lower ceiling set by the relevant 'facts and circumstances' (Welf. & Inst. Code, § 731, subd. (c)), and (2) the court determined that [the minor's] appropriate confinement period was a period equal to the maximum adult term." (*Julian R.*, *supra*, 47 Cal.4th at p. 499, fn. omitted.)

After staying appellant's confinement time on counts 1 and 2, the juvenile court imposed the maximum confinement based on count 4 (§ 286, subd. (c)(2)(B)).³ The court stated:

"The [c]ourt has considered and received the juvenile sexual offense recidivism risk assessment. The available confinement time is 13 years, less 5 days credit for time served. The [c]ourt has considered the individual facts and circumstances of the case in determining the maximum period of confinement. The [c]ourt sets the maximum confinement time at 13 years."

As is clear from the record, the juvenile court properly considered appellant's lack of juvenile history as a sex offender and low risk of reoffending in deciding to impose the maximum term of confinement. We find no abuse of discretion in the juvenile court's decision and appellant fails to persuade us otherwise.

³ Section 286, subdivision (c)(2)(B) provides: "Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years."

DISPOSITION

The judgment is affirmed.